



Council Communication

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: TOM CONDIT P.E., DEVELOPMENT ENGINEER, 480-503-6919

THROUGH: MIKE GILLESPIE P.E., TOWN ENGINEER
KYLE MIERAS, DEVELOPMENT SERVICES DIRECTOR
MARC SKOCYPEC, DEPUTY TOWN MANAGER

MEETING DATE: AUGUST 1, 2013

SUBJECT: APPROVAL OF A CONSULTING SERVICES CONTRACT WITH
ENTELLUS FOR THE ENGINEERING STANDARDS MANUAL
UPDATE, CONTRACT NO. 2014-2106-0004

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's Infrastructure Strategic Initiative as it provides for improved engineering standards for both public and private development.

LEGAL REVIEW

☒ Complete

☐ N/A

FINANCIAL REVIEW

☒ Complete

☐ N/A

RECOMMENDED MOTION

A MOTION TO APPROVE A CONSULTING SERVICES CONTRACT WITH ENTELLUS FOR THE ENGINEERING STANDARDS MANUAL UPDATE, CONTRACT NO. 2014-2106-0004, IN AN AMOUNT NOT TO EXCEED \$120,000.00 AND AUTHORIZE THE MAYOR TO EXECUTE THE REQUIRED DOCUMENTS.

BACKGROUND/DISCUSSION

The Town has already completed substantial work towards the modernization of our existing Details, as well as completing a draft Supplement to Maricopa Association of Governments Uniform Standard Specifications for Public Works Construction (MAG Supplement). In order to finalize these efforts, a major update to our existing *Public Works and Engineering Standards and Details Manual* (Manual) is also required. The updated Manual will set forth the minimum requirements for the construction of, and improvements to: public and private streets; water, sewer, and reclaimed water

utilities; storm water systems; placement and operation of any structures within Town rights-of-way and easements, including streetlights and traffic signals; and all excavation and grading within the Town. The Manual will also establish uniform criteria to guide our own CIP construction projects. The Manual shall reflect the following key goals:

- Incorporate input from key stakeholders: designers, consultants, contractors, outside agencies, and internal divisions / departments;
- Provide infrastructure requirements that promote a safe, reliable, and livable community;
- Develop clear and concise, user-friendly documents that are easy to follow, easy to understand, and easy to use;
- Provide for cost-effective construction, while balancing initial cost considerations with long-term maintenance requirements, operability, and public safety;
- Be compatible with regional Maricopa Association of Government documents, while incorporating local and preferred deviations from regional standards;
- Avoid duplication with and repetition of other Town regulations, codes, forms, checklists, and standards. Where appropriate, reference outside documents.

A request for statement of qualifications was issued for this project in spring 2013, and the Entellus project team was selected based on their qualifications. A major focus of the project will be to provide the opportunity for key internal and external stakeholders to provide input and comment throughout the development of the Manual.

This contract was reviewed by Attorney Phyllis Smiley.

FINANCIAL IMPACT

This project is included in the Town's adopted 2013-14 Budget and is funded at varying levels through the Town's Environmental Services, Streets, Wastewater and Water Divisions. The proposed contract amount for the scope of work is \$120,000, meeting the proposed budget for the project.

Project Accounting Code:	210301.41050101.5131 (Environmental Services)	\$ 12,000
Project Accounting Code:	120200.41060100.5131 (Streets)	\$ 36,000
Project Accounting Code:	210201.41070100.5131 (Wastewater)	\$ 36,000
Project Accounting Code:	210101.41080100.5107 (Water)	<u>\$ 36,000</u>
		\$120,000

The financial impact was reviewed by Cris Parisot, Management and Budget Analyst.

STAFF RECOMMENDATION

Staff has reviewed the fees associated with this work and finds that they meet Gilbert's expectations for the services, and recommends approval of the Consulting Services Contract.

Respectfully submitted,



Tom Condit, P.E.
Development Engineer
tom.condit@gilbertaz.gov

Attachments and Enclosures:

Consultant Services Contract, including Scope of Work, Schedule and Fee Proposal

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

THIS Agreement is entered into as of this _____ day of _____, 20____, by and between the Town of Gilbert, Arizona, a municipal corporation, hereinafter referred to as "Gilbert" and Entellus, hereinafter referred to as the "Consultant."

FOR THE PURPOSE of providing professional consulting services for the Town of Gilbert on the Engineering Standards Manual Update Project, hereinafter referred to as the "Project," Gilbert and Consultant do hereby mutually agree to the following:

1. SERVICES AND RESPONSIBILITIES

1.1 Retention of the Consultant. In consideration of the mutual promises contained in this Agreement, Gilbert engages the Consultant to render professional services set forth herein, in accordance with all the terms and conditions contained in this Agreement.

1.2 Scope of Services. The Consultant shall do, perform and carry out in a satisfactory and proper manner, as determined by Gilbert, the services set forth in this Agreement, including all exhibits ("Services"). The specific scope of work for this Project is set forth in Exhibit A.

1.3 Responsibility of the Consultant.

1.3.1 Consultant hereby agrees that the documents and reports prepared by Consultant will fulfill the purposes of the Project, shall meet all applicable code requirements and shall comply with applicable laws and regulations. In addition, and not as a limitation on the foregoing, such documents and reports prepared by Consultant shall be prepared in accordance with professional Consulting standards, as applicable. Any review or approval of said documents and reports does not diminish these requirements.

1.3.2 Consultant shall procure and maintain during the course of this Agreement insurance coverage required by Paragraph 4 of this Agreement.

1.3.3 Consultant shall designate Michael Bonar as Project Manager and all communications shall be directed to him. Key Consultant Personnel are set forth in Exhibit B. "Key Personnel" includes the Consultant employee who will place his license number and signature on key documents and those employees who have significant responsibilities regarding the Services and Project. Prior to changing such designation Consultant shall first obtain the approval of Gilbert.

1.3.4 Consultant's subcontracts are set forth in Exhibit B attached hereto and made a part hereof. Any modification to the list of subconsultants on Exhibit B, either by adding, deleting or changing subconsultants, shall require the written consent of Gilbert.

1.3.5 Consultant shall obtain its own legal, insurance and financial advice regarding Consultant's legal, insurance and financial obligations under this Agreement.

1.3.6 Consultant shall coordinate its activities with Gilbert's representative and submit its reports to Gilbert's representative.

1.3.7 Consultant shall provide, pay for and insure under the requisite laws and regulations all labor, materials, equipment, and transportation, and other facilities and services necessary for the proper execution and completion of the Services. Consultant shall provide and pay for and insure for all equipment necessary for the Services.

1.3.8 Consultant shall obtain and pay for all business registrations, licenses, permits, governmental inspections and governmental fees necessary and customarily required for the proper execution and completion of Services. Consultant shall pay all applicable taxes. Consultant shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Services.

1.4 Responsibility of Gilbert.

1.4.1 Gilbert shall cooperate with the Consultant by placing at his disposal all available information concerning the Project. Gilbert agrees to obtain its own legal, insurance and financial advice Gilbert may require for the Project.

1.4.2 Gilbert designates Tom Condit, Development Engineer as its Project Representative. All communications to Gilbert shall be through its Project Representative.

1.5 Contract Term; Renewal.

1.5.1 The Contract commences upon execution by both parties and continues through June 30, 2014.

1.5.2 Schedule of Services. The Schedule of Services is set forth in Exhibit C.

2. COMPENSATION AND METHOD OF PAYMENT

2.1 Compensation. All compensation for complete and satisfactory completion of services rendered by Consultant, including its subconsultant(s), shall be set forth in Exhibit D and shall not exceed \$120,000.00.

2.2 Method of Payment. Method of payment shall be set forth in Exhibit D. If payment is to be made monthly, Consultant shall prepare monthly invoices and progress reports which clearly indicate the progress to date and the amount of compensation due by virtue of that progress. All invoices shall be for services completed.

3. CHANGES TO THE SCOPE OF SERVICES

3.1 Change Orders. Gilbert may, at any time, and by written change order, make changes in the services to be performed under this Agreement. A form of change order is attached hereto as Exhibit E. If such changes cause an increase or decrease in the Consultant's cost or time required for performance of any services under this Agreement, an equitable adjustment shall be made and the Agreement shall be modified in writing accordingly. Any claim of the Consultant for adjustment under this clause must be submitted in writing within thirty (30) days from the date of receipt by the Consultant of the notification of change. It is distinctly understood and agreed by the parties that no claim for extra services provided or materials furnished by Consultant will be allowed by Gilbert except as provided herein nor shall

Consultant provide any services or furnish any materials not covered by this Agreement unless Gilbert first approves in writing.

4. INSURANCE REPRESENTATIONS AND REQUIREMENTS

4.1 General. Consultant agrees to comply with all Gilbert ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of Consultant, Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of A-7 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to Gilbert. Failure to maintain insurance as specified may result in termination of this Agreement at Gilbert's option.

4.2 No Representation of Coverage Adequacy. By requiring insurance herein, Gilbert does not represent that coverage and limits will be adequate to protect Consultant. Gilbert reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

4.3 Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers Compensation insurance and Professional Liability insurance if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, Gilbert, its agents, representative, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

4.4 Coverage Term. All insurance required herein shall be maintained in full force and effect until all Services required to be performed under the terms of this Agreement is satisfactorily performed, completed and formally accepted by Gilbert, unless specified otherwise in this Agreement.

4.5 Primary Insurance. Consultant's insurance shall be primary insurance as respects performance of subject contract and in the protection of Gilbert as an Additional Insured.

4.6 Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the Services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three year period.

4.7 Waiver. All policies, including Workers' Compensation Insurance, shall contain a waiver of rights of recovery (subrogation) against Gilbert, its agents, representative, officials, directors, officers, and employees for any claims arising out of the Services of Consultant.

Consultant shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

4.8 Policy Deductibles and or Self Insured Retentions. The policies set forth in these requirements may provide coverage, which contain deductibles or self insured retention amounts. Such deductibles or self insured retention shall not be applicable with respect to the policy limits provided to Gilbert. Consultant shall be solely responsible for any such deductible or self insured retention amount. Gilbert, at its option, may require Consultant to secure payment of such deductible or self insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

4.9 Use of SubConsultants. If any Services under this Agreement are subcontracted in any way, Consultant shall execute written agreement with SubConsultant containing the same Indemnification Clause and Insurance Requirements set forth herein protecting Gilbert and Consultant. Consultant shall be responsible for executing the agreement with SubConsultant and obtaining Certificates of Insurance verifying the insurance requirements.

4.10 Evidence of Insurance. Prior to commencing any Services under this Agreement, Consultant shall furnish Gilbert with Certificate(s) of Insurance, or formal endorsements as required by this Agreement, issued by Consultant's Insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage's, conditions, and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Acceptance and reliance by Gilbert on a Certificate of Insurance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. Such Certificate(s) shall identify the Agreement and be sent to Gilbert Risk Manager. If any of the above cited policies expire during the life of this Agreement, it shall be Consultant's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates shall specifically cite the following provisions:

4.10.1 Gilbert, its agents, representatives, officers, directors, officials and employees is an Additional Insured as follows:

- a. Commercial General Liability-Under ISO Form CG 20 10 11 85 or equivalent.
- b. Auto Liability-Under ISO Form CA 20 48 or equivalent.
- c. Excess Liability-Follow Form to underlying insurance.

4.10.2 Consultant's insurance shall be primary insurance as respects performance of this Agreement.

4.10.3 Certificate shall cite a thirty (30) day advance notice cancellation provision. If ACORD Certificate of Insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

4.11 Required Coverage:

4.11.1 Commercial General Liability: Consultant shall maintain “occurrence” from Commercial Liability Insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent Consultants, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, Gilbert, its agents, representative, officers, directors, officials and employees shall be cited as an Additional Insured Endorsement form CG 20 10 11 85 or equivalent, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you”. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

4.11.2 Professional Liability: Consultant shall maintain Professional Liability insurance covering errors and omissions arising out of the Services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claims and \$2,000,000 all claims. Professional Liability coverage specifically shall contain contractual liability insurance covering the contractual obligations of this Agreement. In the event the Professional Liability insurance policy is written on a “claims made” basis, coverage shall extend for three (3) years past completion and acceptance of the Services, and Consultant shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.

4.11.3 Vehicle Liability: Consultant shall maintain Business Automobile Liability Insurance with a limit of \$1,000,000 each occurrence on Consultant’s owned, hired, and non-owned vehicles assigned to or used in the performance of the Consultant’s Services under this Agreement. Coverage will be at least as broad as Insurance Services Office, Inc., coverage code “1” any auto policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of performance of this Agreement, Gilbert, its agents, representative, officers, directors, officials and employees shall be cited as an Additional Insured under the Insurance Service Offices, Inc. Business Auto Policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

4.11.4 Workers’ Compensation Insurance: Consultant shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant’s employees engaged in the performance Services under this Agreement and shall also maintain Employer Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

5. INDEMNIFICATION

To the fullest extent permitted by law, the Consultant, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless Gilbert, its agents, officers, officials and employees from and against all demands, claims, proceedings, suits, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), and all claim adjustment and handling expenses, relating to, arising out of, or alleged to have resulted from acts, errors, mistakes, omissions, defective or deficient Services caused by the Consultant, its agents, employees or any tier of Consultant's subconsultants related to the Services in the performance of this Agreement. Consultant's duty to defend, hold harmless and indemnify Gilbert, its agents, officers, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use of resulting therefrom, caused by Consultant's acts, errors, mistakes, omissions, defective or deficient Services in the performance of this Agreement including any employee of the Consultant, any tier of Consultant's subconsultant or any other person for whose acts, errors, mistakes, omissions, Services the Consultant may be legally liable including Gilbert. Such indemnity does not extend to Gilbert's negligence.

5.1 If any claim, action or proceeding is brought against Gilbert by reason of any such act or omission of Consultant or any employee, agent or subcontractor of Consultant in performing the Services under this Agreement and or described herein, upon demand made by Town, Consultant, at its sole costs and expense, shall pay, resist or defend such claim or action on behalf of Gilbert by attorney of Consultant, or if covered by insurance, Consultants' insurer, all of which must be approved by Gilbert, which approval shall not be unreasonably withheld or delayed. Gilbert shall cooperate with all reasonable efforts in the handling and defense of such claim. Included in the foregoing, Gilbert may engage its own attorney to defend or assist in its defense. Any settlement of claims shall fully release and discharge the indemnified parties from any further liability for those claims. The release and discharge shall be in writing and shall be subject to approval by Gilbert, which approval shall not be unreasonable withheld or delayed. If Consultant neglects or refuses to defend Gilbert as provided by this Agreement, any recovery or judgment against Gilbert for a claim covered under this Agreement shall conclusively establish Consultant's liability to Gilbert in connection with such recovery or judgment, and if Gilbert desires to settle such dispute, Gilbert shall be entitled to settle such dispute in good faith and Consultant shall be liable for the amount of such settlements and all expenses connected to the defense, including reasonable attorney fees, and other investigative and claims adjusting expenses.

5.2 Insurance provisions set forth in this Agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

6. TERMINATION OF THIS AGREEMENT

6.1 Termination. Gilbert may, by written notice to the Consultant, terminate this Agreement in whole or in part with seven (7) days notice, either for Gilbert's convenience or because of the failure of the Consultant to fulfill his contract obligations. Upon receipt of such notice, the Consultant shall: (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to Gilbert copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process. This Agreement may be terminated in whole or in part by the Consultant in the event of substantial failure by Gilbert to fulfill its obligations.

6.2 Payment to Consultant upon Termination. If the Agreement is terminated, Gilbert shall pay the Consultant for the services rendered prior thereto in accordance with percent completion at the time work is suspended minus previous payments.

7. ASSURANCES

7.1 Solicitations for Subconsultants, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Consultant for Services to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and any Regulations relative to nondiscrimination on the grounds of race, color or national origin.

7.2 Examination of Records. The Consultant agrees that duly authorized representatives of Gilbert shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Consultant involving transactions related to this Agreement.

7.3 Ownership of Document and Other Data. Original documents, such as tracings, plans, specifications, maps, basic survey notices and sketches, charts, computations, and other data prepared or obtained under the terms of this Agreement or any change order are and will remain the property of Gilbert unless otherwise agreed to by both parties. Gilbert may use such documents for other purposes without further compensation to the Consultant; however, any reuse without written verification or adaptation by Consultant for the specific purpose intended will be at Gilbert's sole risk and without liability or legal exposure to Consultant. Any verification or adaptation of the documents by Consultant for other purposes than contemplated herein will entitle Consultant to further compensation as agreed upon between the parties.

7.4 Litigation. Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any damages claimed or portion of the amount payable under this Agreement, that all litigation and collection expenses, witness fees, court costs, and reasonable attorneys' fees incurred shall be paid to the prevailing party.

7.5 Independent Consultant. This Contract does not create an employee/employer relationship between the parties. It is the parties' intention that the Consultant will be an independent Consultant and not Gilbert's employee for all purposes, including, but not limited

to, the application of the Fair Labor Standards Act, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the Internal Revenue Code, the Immigration and Naturalization Act, Arizona revenue and taxation laws, Arizona Workers' Compensation Law, and Arizona Unemployment Insurance Law. The Consultant agrees that it is a separate and independent enterprise from Gilbert, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Contract shall not be construed as creating any joint employment relationship between the Consultant and Gilbert, and Gilbert will not be liable for any obligation incurred by the Consultant, including but not limited to unpaid minimum wages and/or overtime premiums.

7.6 Immigration Law Compliance Warranty. As required by A.R.S. § 41-4401, Consultant hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Consultant further warrants that after hiring an employee, Consultant verifies the employment eligibility of the employee through the E-Verify program. If Consultant uses any subconsultants in performance of the Services, subconsultants shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subconsultants shall further warrant that after hiring an employee, such subconsultant verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract. Consultant is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. Gilbert at its option may terminate the Contract after the third violation. Consultant shall not be deemed in material breach of this Contract if the Consultant and/or subconsultants establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). Gilbert retains the legal right to inspect the papers of any Consultant or subconsultant employee who works on the Contract to ensure that the Consultant or subconsultant is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the parties may modify this paragraph consistent with state law.

7.7 Equal Treatment of Workers. Consultant shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the Services. Consultant shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration ("OSHA") and the Fair Labor Standards Act ("FLSA"). Consultant shall protect and indemnify Gilbert and its representatives against any claim or liability arising from or based on the violation of such, whether by Consultant or its employees.

7.8 Sudan and Iran. Contractor warrants that it does not have scrutinized business operations in Sudan or Iran, as prohibited by A.R.S. §§ 35-391.06 and 35-393.06, and further acknowledges that any subcontractor who is contracted by Contractor to perform work pursuant to the Contract shall warrant that they do not have scrutinized business operations in Sudan or Iran.

7.9 Exclusive Use of Services - Confidentiality. The services agreed to be provided by Consultant within this Agreement are for the exclusive use of Gilbert and Consultant shall not engage in conflict of interest nor appropriate Gilbert work product or information for the benefit of any third parties without Gilbert consent.

7.10 Sole Agreement. There are no understandings or agreements except as herein expressly stated.

7.11 Caption. Paragraph captions are for convenience only and are not to be construed as a part of this Agreement; and in no way do they define or limit the Agreement.

7.12 Time is of the Essence. The timely completion of the Project is of critical importance to the economic circumstances of Gilbert.

7.13 Notices. Any notice to be given under this Agreement shall be in writing, shall be deemed to have been given when personally served or when mailed by certified or registered mail, addressed as follows:

GILBERT:

Tom Condit, PE
Development Engineer
Town of Gilbert
90 East Civic Center Drive
Gilbert, Arizona 85296

CONSULTANT:

Michael Bonar, PE
Project Manager
Entellus
2255 North 44th Street, Suite 125
Phoenix, Arizona 85008

The address may be changed from time to time by either party by serving notices as provided above.

7.14 Controlling Law. This Agreement is to be governed by the laws of the State of Arizona.

8. SUSPENSION OF WORK

8.1 Order to Suspend. Gilbert may order the Consultant, in writing, to suspend all or any part of the Services for such period of time as he may determine to be appropriate for the convenience of Gilbert.

8.2 Adjustment to Contract Fee. If the performance of all or any part of the Services is, for any unreasonable period of time, suspended or delayed by an act of Gilbert in the administration of this Agreement, or by its failure to act within the time specified in this Agreement (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this Agreement necessarily caused by such unreasonable suspension or modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension or delay to the extent (1) that performance was suspended or delayed for any other cause, including the fault or negligence of the Consultant, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Agreement.

9. INTERESTS AND BENEFITS

9.1 Interest of Consultant. The Consultant covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed.

9.2 Interest of Gilbert Members and Others. No officer, member or employee of Gilbert and no member of its governing body, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the services to be performed under this Agreement, shall participate in any decision relating to this Agreement which affects his personal interest or have any personal or pecuniary interest, direct or indirect, in this Agreement or the process thereof.

9.3 Notice Regarding A.R.S. § 38-511. This Contract is subject to cancellation under Section 38-511, Arizona Revised Statutes.

10. ASSIGNABILITY

The Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same without the prior written consent of Gilbert thereto; provided, however, that claims for money due or to become due to the Consultant from Gilbert under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to Gilbert.

IN WITNESS WHEREOF, Gilbert and the Consultant have executed this Agreement as of the date first written.

TOWN OF GILBERT

By: _____,
_____, Mayor

ATTEST:

By: _____
Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

By: _____
Curtis, Goodwin, Sullivan,
Udall & Schwab, P.L.C.
Town Attorneys

CONSULTANT

By: _____
Its: _____

EXHIBIT A SCOPE OF WORK

A. PROJECT DESCRIPTION

The Project is generally described as follows: The Town of Gilbert (Gilbert) desires to complete a major update to their existing Public Works and Engineering Standards and Details by developing an integrated Engineering Design and Construction Standards Manual (Manual). The Manual will set forth the minimum requirements for the construction of, and improvements to: public and private streets; water, sewer, and reclaimed water utilities; storm water systems; placement and operation of any other structures within Gilbert rights-of-way and easements, including streetlights and traffic signals; and all excavation and grading within Gilbert. The Manual will also establish uniform criteria to guide Gilbert's own construction and improvement within Gilbert rights-of-way and easements. The Manual shall reflect the following key goals:

- Incorporate input from key stakeholders: designers, consultants, contractors, outside agencies, and internal (Gilbert) divisions / departments;
- Provide infrastructure requirements that promote a safe, reliable, and livable community;
- Develop clear and concise, user-friendly documents that are easy to follow, easy to understand, and easy to use;
- Provide for cost-effective construction, while balancing initial cost considerations with long-term maintenance requirements, operability, and public safety;
- Be compatible with regional Maricopa Association of Government documents, while incorporating local and preferred deviations from regional standards;
- Avoid duplication with and repetition of other Gilbert regulations, codes, forms, checklists, and standards. Where appropriate, reference outside documents.

B. PROJECT SCOPE OF WORK

Gilbert has already completed substantial work towards the modernization of their existing Standard Details, as well as completing a draft Supplement to Maricopa Association of Governments (MAG) Uniform Standard Specifications for Public Works Construction (MAG Supplement). The Consultant shall utilize these materials as a launching point to prepare an integrated Manual that corresponds to and builds upon Gilbert's existing regulations, codes and ordinances, and incorporates the latest technological advances and construction methods, as proven by other municipalities in the Phoenix area. The Scope of Services has been divided into the following major tasks:

1. **Kick off Meeting:** Consultant shall work with the Town to develop a list of stakeholders for the project. From this list, a core group of Stakeholders, estimated at 15 to 20 people, will be invited to attend a kick-off meeting. This meeting will be held within 3 weeks from notice to proceed. It will generally include introductions of key team members, review pertinent information and documentation, and review the overall approach to the process of developing the documents. The Consultant will share the information gathered to date and the schedule of the project. Consultant will gather information from all stakeholders and receive input as to additional issues and concerns. The Consultant will also develop a draft agenda and finalize it with the Town's input. The Town will host and arrange for the facilities and send notification of the meeting to all invitees.
2. **Coordination Meetings:** The Consultant shall meet with the Town Project Manager on a regular basis to facilitate the progress of the work. Coordination meetings shall be either in

person or via teleconference. It is assumed there will be approximately 8 progress meetings, of approximately 3 hours. It is also assumed there will be 8 additional meetings, of about 1 hour each, that will be either a teleconference or additional time before or after another project meeting.

3. **Data Collection and Analysis:** Consultant will obtain and review existing Town standards, details, codes, ordinances, regulations, etc., as well as representative samples of Engineering Design Standards from communities within the Phoenix metropolitan area and other “best in class” municipal Design and Construction Standards.
4. **Initial Recommendations:** Consultant will prepare a detailed outline for the Manual and provide recommendations on finalizing the accompanying materials (Standard Details and MAG Supplement), while avoiding duplication across all existing Town documents. Consultant will meet with and present these recommendations to Gilbert’s project team for review and comment. Consultant will also make changes to some of Gilbert’s Standard Details as directed by the Town. This work shall be done as an allowance item.
5. **Prepare Draft Manual:** At this stage, the Manual should be 50% complete, with all major topics included and outlines for all minor / secondary topics included for reference. It will include much of the detail in the major topics. Reviewers should be able to understand the direction the Manual is taking in sufficient detail to provide useful comments to the project team. At this time, the Consultant will submit the Manual to Gilbert’s Project Manager for comments. Consultant will address the comments and incorporate them into the Manual prior to distribution to a key group of stakeholders. Distribution will be electronically via e-mail and reference to an FTP site set up by Consultant where the materials can be downloaded.
6. **Stakeholder Input and Meeting:** The 50% Manual will be distributed to a key group of Stakeholders (including Gilbert’s project team) for review and comment. A meeting will be held with these stakeholders to provide an overview of the project, overall schedule, progress to date, next steps, and to receive comments from the Stakeholders. This meeting will be facilitated by a member of the Engineer’s Team to ensure we achieve a clear understanding of stakeholder roles and responsibilities and establish the methods to receive effective input and responses from Stakeholders.
7. **Prepare Response to Stakeholder Comments:** Consultant shall prepare a written log of all comments received and provide a recommendation on whether to accept, partially accept, or not accept each comment. Gilbert’s Project Manager shall receive, review and provide feedback to Consultant on this item. A copy of the resolution comment log will be provided to all stakeholders addressing the various comments. Prior to sending out the response to Stakeholders, the Consultant will meet with the Town Project Manager to review the responses to stakeholder comments. Consultant will edit the comment response Log prior to sending out to stakeholders. It is anticipated there may be between 300 and 400 comments at this stage.
8. **Revise and Update Manual:** At this stage, the Manual should be at the pre-final stage (90%) complete, with all 50% comments addressed. All minor and secondary topics are complete at this stage, with emphasis on completing those areas that generated the most comments during the 50% review. Reviewers should be able to understand the Manual in sufficient detail to provide specific comments on any subsection.

9. **Stakeholder Input & Meeting:** The 90% pre-final Manual will be distributed to a key group of Stakeholders (including Gilbert's project team) for review and comment. Consultant shall prepare a written log of all comments received and provide a recommendation on whether to accept, partially accept, or not accept each comment. Gilbert's Project Manager shall receive, review and provide feedback to Consultant on this item. A copy of the resolution comment log will be provided to all stakeholders addressing the various comments. Prior to sending out the response to Stakeholders, the Consultant will meet with the Town Project Manager to review the responses to stakeholder comments. Consultant will edit the comment response Log prior to sending out to stakeholders. It is anticipated there may be between 200 and 300 comments at this stage. This meeting will be facilitated to ensure we have effectively addressed responses from Stakeholders.
10. **Prepare Draft-Final Manual:** At this stage, the Manual should be 100% complete, with all 90% comments addressed. Virtually all minor and secondary topics are complete at this stage, with emphasis on completing loose ends such as final QA/QC, compiling appendices, and addressing any 90% comments requiring additional research. New comments from reviewers at this stage should primarily consist of typos and wordsmithing requests. Readers should completely understand every section of the Manual, as if it were in final, published form.
11. **Prepare Final Manual:** Consultant shall complete the Final Manual and submit one copy to Gilbert's Project Manager for review. Any comments by Gilbert's PM shall be incorporated by Consultant. Consultant shall be available for one Town Council Work Study Session, to present the Manual and answer any questions. Provide the comment resolution form along with the final manual and the process for future updates.
12. **Submittal of Deliverables:** Consultant shall submit one single-sided, original, unbound, reproducible Manual to the Town; four bound hard copies; one fully modifiable electronic version of the Manual (each Section of the Manual shall be a separate file and each Standard Detail shall be in a separate file); and one all-inclusive electronic copy of the Manual in .pdf format.
13. **Project Management:** Consultant shall perform the following project management tasks in support of the execution of this project:
 - a. Quality Control – Third party review of all documents, grammar and typographical issues, ensuring issues have been addressed
 - b. Document Control - Maintain data collection log, managing the comment resolution processes, and managing the ftp site
 - c. Invoicing – include short description of tasks complete to date and schedule impact
14. **Optional Tasks:** Consultant shall perform Optional Tasks as requested and approved by the Owner. Such tasks could include but not be limited to:
 - a. Complete Revisions to Gilbert's Amendments to MAG Standard Specifications
 - b. Complete Revisions to 109 Standard details and 44 Standards
 - c. Facilitate and document a workshop to identify the process that Gilbert will use going forward to keep the Manual and Standards up to date.
 - d. Provide third tier coordination with MCDOT and FCDMC
 - e. Develop an internal and external outreach/education plan

EXHIBIT B

CONSULTANT'S KEY PERSONNEL AND SUBCONSULTANTS

ENTELLUS

KEY PERSONNEL:

- Michael J. Bonar, PE, MBA, AVS – Project Manager / Principal
- Bill Linck, PE – Deputy Project Manager / Technical Writer
- Keith Nath, PE – Technical Advisor
Municipality Perspective
- Tim Crall, PE – Technical Advisor
Private Development Perspective
- Michael Colland, AIC-CPC – Technical Advisor
Contracting Perspective
- Jennifer Michelson – Document Control
- Jeff Schorey – CADD Control

SUBCONSULTANTS

RH & ASSOCIATES:

- Renee L. Hoekstra, CVS – Project Partnering / Development

EXHIBIT C
SCHEDULE OF SERVICES

(This schedule is based on a Notice to Proceed date of August 8, 2013)

Task 1, Kick off Meeting: Week of August 19, 2013

Task 2, Coordination Meetings: August, 2013 – June, 2014

Task 3, Data Collection and Analysis: August 12, 2013 – September 23, 2013

Task 4, Initial Recommendations: August 19, 2013 – September 30, 2013

- Meeting w/ Gilbert PM: Monday, September 23
- Receive comments from Gilbert PM: Monday, September 30

Task 5, Prepare Draft Manual: September 30, 2013 – December 3, 2013

- Submit Draft 50% Manual to Gilbert PM: Wednesday, November 20
- Receive comments from Gilbert PM: Tuesday, December 3

Task 6, Stakeholder Input and Meeting:

- Distribute 50% Manual – Thursday, December 12, 2013
- Comments Due & Stakeholder Meeting: Monday, January 6, 2014

Task 7, Prepare Response to Stakeholder Comments: January 6, 2014 – January 30, 2014

- Provide completed response log to Gilbert PM: Tuesday, January 14
- Meeting w/ Gilbert PM: Thursday, January 23
- Distribute response log to Stakeholders: Thursday, January 30

Task 8, Revise and Update Manual: January 23, 2014 – March 6, 2014

- Submit Draft 90% Manual to Gilbert PM: Thursday, February 27
- Receive comments from Gilbert PM: Monday, March 10

Task 9, Stakeholder Input & Meeting:

- Distribute 90% Manual – Monday, March 17
- Comments Due & Stakeholder Meeting: Thursday, April 3
- Provide completed response log to Gilbert PM: Thursday, April 10
- Receive comments from Gilbert's PM: Monday, April 21

Task 10, Prepare Draft-Final Manual: April 21, 2014 – May 12, 2014

Task 11, Prepare Final Manual:

- Distribute Final Manual to Gilbert PM – Monday, May 12
- Receive final comments from Gilbert PM: Monday, May 19
- Final Manual ready for distribution to Town Council: Tuesday, May 27
- Town Council Work Study: Tuesday, June 17

Task 12, Submittal of Deliverables: Week of June 23, 2014

EXHIBIT D PAYMENT SCHEDULE

A. Compensation

1. The consideration of payment to Consultant, as provided herein shall be in full compensation for all of Consultant's work incurred in the performance hereof, including offices, travel, per diem or any other direct or indirect expenses incident to providing the services.
2. Attached hereto as Exhibit D-1 is the Consultant's hours and fee estimate for the Project.

B. Method of Payment

Invoices shall be on a form and in the format provided by Gilbert and are to be submitted in triplicate to Gilbert via Gilbert's authorized representative.

C. Reimbursable Costs

Consultant will be reimbursed for expenses up to a maximum amount of \$708.00. The items allowable for reimbursement are as follows:

1. Cost of transportation. (Mileage associated with Project, but not to/from Project site at 55 cents per mile. Any out of state travel must receive prior approval of Gilbert.)
2. Costs of printing, as required by the contract.
3. Cost of long distance telephone, postage, UPS, Federal Express, etc.
4. Costs of faxes at \$0.15 per page.
5. Cost of other items as required, with prior approval from Gilbert.

All reimbursable costs must be submitted with monthly bill.

EXHIBIT D-1

**Town of Gilbert
Engineering Standards Manual Update Project
Contract Number: 2014-2106-0004**

HOUR AND FEE ESTIMATE

7/15/2013

Entellus Project No. 765.035

Projected Duration: 193 working days (plus float of 40 working days)		PRIN/PM	DPM/PE	SR PE (MUNI)	SR PE (PRIV)	CADD	CONTRACTOR	CLER	TOTAL	TOTAL
		\$165.00	\$140.00	\$150.00	\$150.00	\$75.00	\$125.00	\$61.00	HOURS	COST
Task #	Task Description	BONAR	LINCK	NATH	CRALL	SCHOREY	COLLAND	MICHELSON		
1	Kick-off Meeting	8	8					6	22	\$2,808
2	Coordination Meetings (assume 8 at Town, 8 via phone or add on)	32	16			5		32	85	\$9,847
3	Data Collection and Analysis	12	20	1	1	8		32	74	\$7,632
4	Initial Recommendations - TOC and use of Details developed to date								0	\$0
	a. Prepare Draft Table of Contents for Manual	20	20	2	2		2	12	58	\$7,682
	b. Allowance for Client-Directed Work on Standard Details	5	5			20			30	\$3,025
5	Prepare Draft Engineering Design Standards Manual (50%)	60	120	4	4		4	60	252	\$32,060
6	Stakeholder Input and Meeting - 50%	12	12					8	32	\$4,148
7	Prepare Response to Stakeholder Comments	16	16	2	2		2	8	46	\$6,218
8	Revise and Update Manual to 90%	32	60	2	2	8	2	40	146	\$17,570
9	Stakeholder Input and Meeting - 90%	12	12					8	32	\$4,148
10	Prepare Draft-Final Manual	20	30			2		32	84	\$9,602
11	Prepare Final Manual	8	16			1		12	37	\$4,367
12	Submittal of Deliverables	1	2					4	7	\$689
13	Project Management								0	\$0
	a. Quality Control				12			12	24	\$2,532
	b. Document Control	1	2			12		12	27	\$2,077
	c. Progress Reporting to PM (Monthly at 10 months)	5							5	\$825
	d. 2 Progress reports to Council, Public	8						4	12	\$1,564
14	Optional Tasks								0	\$0
	a. Review and re-publish Gilbert's Amendments to MAG Specs.								0	\$0
	b. Review and edit 104 details and 44 Standards								0	\$0
	c. Develop Process for future updates								0	\$0
	d. Coord. With MCDOT and FCDMC								0	\$0
	e. Internal/ external outreach plan								0	\$0
TOTAL		252	339	11	23	56	10	282	973	\$116,792
		25.9%	34.8%	1.1%	2.4%	5.8%	1.0%	29.0%		

ALLOWANCES

RHA, LLC - Project Partnering / Development

\$2,500

\$2,500

Vehicle Mileage (Assume 320 miles @ \$0.55/mile)

\$160

Postage and Deliveries

\$148

Reproduction

\$400

TOTAL

\$708

TOTAL FEE \$120,000.00

EXHIBIT E CHANGE ORDER

CHANGE ORDER NO. _____

Distribution: GILBERT []
CONSULTANT []
OTHER []

PROJECT: *ENGINEERING STANDARDS MANUAL UPDATE* DATE:

OWNER: Town of Gilbert

CONSULTANT: Entellus

AGREEMENT DATED:

CHANGES: The Agreement is changed as follows:

Not valid until signed by both Gilbert and Consultant.

Signature of Consultant indicates acceptance.

The original compensation was _____

Net change by previously authorized Change Orders _____

The compensation prior to this Change Order was _____

The compensation will be increased by this Change Order in the amount of _____

The new compensation under the Agreement including this Change Order will be _____.

The Contract Time will increase by _____

ACCEPTANCE STATUS:

Consultant
By _____

Town of Gilbert
By _____

Date _____

Date _____